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SENATE

{ REPORT
104-277

TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEAR 1997
FOR INTELLIGENCE AND INTELLIGENCE-RELATED AC-
TIVITIES OF THE UNITED STATES GOVERNMENT

JUNE 6, 1996.—Ordered to be printed

Mr. THURMOND, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany S. 1718]

The Committee on Armed Services, to which was referred the bill (S. 1718) having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

S. 1718 would authorize appropriations for fiscal year 1997 for intelligence and intelligence-related activities of the United States Government, including certain Department of Defense intelligence-related activities within the jurisdiction of the Senate Armed Services Committee (SASC).

The Senate Select Committee on Intelligence (SSCI) reported the bill on April 30, 1996 and it was referred to the Committee on Armed Services on May 2, 1996 in accordance with section 3(b) of Senate Resolution 400, 94th Congress.

SCOPE OF COMMITTEE REVIEW

The committee conducted a detailed review of the intelligence community authorization request for fiscal year 1997. The committee conducted hearings and met with the Chairman and Vice Chairman of the SSCI to discuss budget matters and legislative provisions of concern to both committees. The committee also engaged in lengthy and detailed negotiations in an attempt to resolve issues of disagreement between the SASC and the SSCI.

The committee has carefully reviewed the report of the SSCI (Sen. Rep. 104-258) and has incorporated the relevant budget decisions of the SSCI into S. 1745, the National Defense Authorization

Act for Fiscal Year 1997, which was reported to the Senate on May 13, 1996.

The following explains the committee's proposed amendment to the bill as reported by the SSCI, as well as the committee's clarification to the report issued by the SSCI.

Overview

S. 1718, as reported by the SSCI, contains a number of controversial provisions, which the SASC opposes and the Executive Branch does not support. On April 15, 1996, the Chairman and Ranking Minority Member of the SASC wrote to the Chairman and Vice Chairman of the SSCI to express concern regarding these issues and to urge the SSCI not to include such provisions in the Intelligence Authorization Bill for Fiscal Year 1997. In general, these provisions seek to shift a significant degree of authority from the Secretary of Defense to the Director of Central Intelligence (DCI), especially in the area of budget formulation and execution. The bill also contains a number of provisions that, taken together, lay the foundation for the creation of what amounts to a "Department of Intelligence." The SASC supports a strong DCI yet maintains that the DCI's function is not to act as a quasi-departmental head, but to coordinate the intelligence activities of various departments and to act as the principal intelligence advisor to the President and the National Security Council. Providing the DCI the type of authority recommended by the SSCI would seriously undermine the Secretary of Defense's ability to manage the Department of Defense. The committee notes that the Secretary of Defense strongly opposes such a shift of power and the DCI has not sought such authorities. If S. 1718 were passed in its current form, it would almost certainly be vetoed.

The SSCI nonetheless included many of the controversial provisions in S. 1718, thereby creating a significant disagreement between the SASC and the SSCI. Once S. 1718 had been referred to the SASC on sequential referral (as the Intelligence Authorization Bill is every year), the SASC Chairman and Ranking Minority Member agreed to enter into negotiations with the SSCI to attempt to resolve these differences. Notwithstanding this effort to work out a consensus in good faith, the Chairman and Vice Chairman of the SSCI took the unprecedented step of requesting sequential referral of the Defense Authorization Bill.

After three weeks of negotiations and four proposals and counter-proposals between the committees, the SASC concluded that, given the SSCI's insistence on retaining many of the controversial elements of S. 1718, the differences between the committees were unresolvable through negotiation. Therefore, the SASC has decided to report S. 1718 to the Senate, with a proposed amendment addressing the bill's major deficiencies. The SSCI retains the right to follow a similar procedure with regard to S. 1745. This approach would leave it to the Senate to resolve issues of disagreement between the committees on both S. 1718 and S. 1745.

The committee notes that its proposed amendment only deals with issues within the jurisdiction of the SASC, and that S. 1718 contains a number of other controversial provisions that fall within the jurisdiction of other committees. The committee has not taken

a position on these matters, per se, but individual members of the committee, or other members of the Senate, may offer amendments to S. 1718 to address these issues.

The committee recommends the following specific amendments to S. 1718.

Section 707—Enhancement of authority of Director of Central Intelligence to manage budget, personnel, and activities of intelligence community

Section 707, as reported by the SSCI, would significantly expand the DCI's authority over the DOD elements of the intelligence community. It would: (1) require the Secretary of Defense to get DCI concurrence on the Joint Military Intelligence Program (JMIP) budget, and consult with the DCI on the Tactical Intelligence and Related Activities (TIARA) budget; (2) give the DCI authority to manage all the national collection activities of the intelligence community (including Defense human intelligence); (3) require that any reprogramming within the JMIP receive DCI approval; (4) give the DCI authority to reprogram funds and transfer personnel among National Foreign Intelligence Program (NFIP) elements after consultation with (in lieu of concurrence by) agency heads; (5) give the DCI authority to allocate and expend all NFIP funds for the National Reconnaissance Office (NRO), the National Security Agency (NSA), and the National Imagery and Mapping Agency (NIMA) (giving the DCI authority he now only has for the Central Intelligence Agency (CIA)).

The proposed SASC amendment would enhance the DCI's participation in the management of Defense intelligence activities, but would not alter the authority of the Secretary of Defense over such activities. Specifically, the amendment would: (1) provide for the participation of the DCI in the development of budgets for JMIP and TIARA, while leaving the final authority on these matters with the Secretary; (2) give the DCI the peacetime authority to approve national collection requirements, determine national collection priorities, and resolve conflicts in collection priorities levied on national collection assets; (3) require the Secretary of Defense to consult with the DCI on JMIP reprogramming actions; (4) strike SSCI language allowing the DCI to transfer NFIP funds over the objection of the affected Defense Agency head; (5) strike the SSCI language giving the DCI authority to manage and expend funds for Defense Department elements of the NFIP, and substitute language establishing a database on intelligence funding to give the DCI greater insight into the overall intelligence budget; (6) strike SSCI language giving the DCI authority to rotate personnel in the absence of coordination with agency heads.

Section 708—Reallocation of responsibilities of Director of Central Intelligence and Secretary of Defense for intelligence activities under National Foreign Intelligence Program

Section 708, as reported by the SSCI, would give the DCI joint management authority with the Secretary of Defense over the NFIP elements in the Department of Defense, including NRO, NSA, and NIMA.

The proposed SASC amendment would strike the SSCI's language and substitute a provision that would require the Secretary of Defense to consult with the DCI in fulfilling his responsibilities pertaining to the NFIP (as provided in Section 105 of Title 50, U.S.C.). The SASC amendment would also require the DCI to submit an annual evaluation to Congress and the National Security Council on the performance of the NRO, NSA, and NIMA in meeting their national missions.

Section 709—Improvement of intelligence collection

Section 709, as reported by the SSCI, would establish the position of Assistant DCI for Collection, to be appointed by the President and confirmed by the Senate. Section 709 would also transfer the responsibilities and authorities of the Secretary of Defense for the clandestine elements of the Defense Human Intelligence Service to the DCI.

The proposed SASC amendment would modify the authorities of the Assistant DCI for Collection, limiting them to general responsibilities in assisting the DCI in carrying out existing collection authorities. The proposed SASC amendment would also strike the SSCI language regarding the transfer of authorities over the Defense Human Intelligence Services, and substitute language requiring a report by the DCI and the Deputy Secretary of Defense regarding on-going activities of those officials to achieve commonality, interoperability, and, where practicable, consolidation between the clandestine human intelligence activities of the Defense Human Intelligence Service and the CIA.

Section 711—Improvement of administration of intelligence activities

Section 711, as reported by the SSCI, would establish the position of Assistant DCI for Administration to be appointed by the President and confirmed by the Senate.

The proposed SASC amendment would modify the SSCI language specifying the duties of the Assistant DCI for Administration by dropping a detailed listing of areas for administration.

Section 714—Office of Congressional Affairs

Section 714, as reported by the SSCI, would establish an office of congressional affairs for the intelligence community.

The proposed SASC amendment would change the designation of this new office to "Office of Congressional Affairs for the Director of Central Intelligence" to reflect that this new office would not manage the activities of the various congressional affairs offices in the Department of Defense.

Section 715—Assistance for law enforcement agencies by intelligence community

Section 715, as reported by the SSCI, would authorize U.S. intelligence agencies, on the request of a U.S. law enforcement agency, to collect information on non-U.S. citizens outside the U.S. for law enforcement or counter-intelligence purposes.

The proposed SASC amendment would (1) limit this authority to NRO, NSA, and NIMA; (2) preclude direct participation of military

personnel in arrests; (3) prohibit assistance if it would adversely affect military preparedness; and (4) require the Secretary of Defense to prescribe such regulations as necessary to implement this authority and to protect sources and methods.

Section 716—Appointment and evaluation of officials responsible for intelligence-related activities

Section 716, as reported by the SSCI, would require the Secretary of Defense to seek the concurrence of the DCI before making a recommendation to the President on heads of NRO and NSA. The SSCI provision would also require the DCI to provide annual performance evaluations for the heads of NRO and NSA to the Secretary of Defense.

The proposed SASC amendment would modify the SSCI language requiring DCI concurrence on appointments to provide that the Secretary, after seeking concurrence, may make the recommendation to the President without the DCI's concurrence if the Secretary notes that the DCI does not concur. This modification is consistent with the SASC's intention to extend this recommendation process to the director of NIMA (a matter to be taken up on the Defense Authorization bill). The amendment would also strike the SSCI language requiring the DCI to provide annual performance evaluation. But the committee intends to include language in the Defense Authorization bill that would allow for DCI input on performance evaluations for the directors of NSA, NRO, and NIMA for consideration by the Secretary of Defense in the preparation of the Secretary's own performances evaluations of these directors.

Section 717—Intelligence community senior executive service

Section 717, as reported by the SSCI, would establish an intelligence community Senior Executive Service.

The proposed SASC amendment would strike this provision. The committee notes that the Department of Defense strongly opposes the establishment of a DCI-managed Senior Executive Service that would include a large number of Department of Defense personnel. The SSCI provision contradicts a proposal made by the Executive Branch to improve DOD intelligence civilian personnel management, which the DCI has characterized as one of his top priorities, and which the Secretary of Defense strongly supports. The committee is considering options for including a version of the Executive Branch DOD intelligence personnel proposal in the Defense Authorization bill.

Title VIII—National Imagery and Mapping Agency

Title VIII of S. 1718, as reported by the SSCI, establishes the National Imagery and Mapping Agency (NIMA) in Title 50, U.S.C., not as a Combat Support Agency. The Executive Branch had requested that NIMA be established in Title 10, U.S.C., and be designated in law as a Combat Support Agency. The SASC-reported Defense Authorization Bill contains a comprehensive legislative charter for NIMA, which, with a few minor exceptions, is consistent with the Executive Branch proposal.

The proposed SASC amendment would strike the SSCI language regarding NIMA and would substitute language regarding NIMA's

national mission and clarifying the peacetime status of the DCI's national imagery collection tasking authority. The proposed SASC amendment would also provide that the Secretary of Defense and the DCI, in consultation with the Chairman of the Joint Chiefs of Staff, would jointly identify deficiencies in the capabilities of NIMA to accomplish assigned national missions and develop policies and programs to review and correct such deficiencies. The committee expects that disagreements between the DCI and the Secretary of Defense relating to the identification of NIMA's deficiencies in performing its national mission would be settled according to normal inter-agency procedures, with the President having the ultimate authority to resolve differences. These provisions would be included in title 50, U.S.C. The SASC intends to include identical language in the Defense Authorization bill in addition to language specifying that the Secretary of Defense shall implement actions to correct deficiencies jointly identified by the Secretary and the DCI.

COMMITTEE ACTION

In accordance with the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, the committee approved a motion to report favorably S. 1718 with an amendment.

FISCAL DATA

The committee will publish in the Congressional Record information on five-year cost projections when such information is received from the Congressional Budget Office.

REGULATORY IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that a report on the regulatory impact of a bill be included in the report on the bill. The committee finds that there is no regulatory impact in the cost of S. 1718.

CHANGES IN EXISTING LAW

Pursuant to the provisions of paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by certain portions of the bill have not been shown in this section of the report because, in the opinion of the committee, it is not necessary to dispense with showing such changes in order to expedite the business of the Senate and reduce the expenditure of funds.